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Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Liberia

Note by the Secretariat*

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Liberia from 5 to 9 March 2018, which took place at the invitation of the Government. The objective of the visit was to examine the situation as regards the right to freedom of expression in the country, in particular concerning media independence and access to information.

Liberia has made remarkable progress since the end of the civil war in 2003, transitioning to democratic elections in the space of just 15 years. Whereas political debate and opposition only recently, during the war, led to kidnappings and murders, today the people of Liberia enjoy broad freedom of expression. Yet the situation is not without cause for serious concern. Investigative journalists and media outlets face the risk of debilitating civil lawsuits, and criminal liability for defamation remains on the books under Liberian law. Poverty, which has such a deep impact on development and governance, also works against sustainable and professional journalism. The United Nations Mission in Liberia had a profound impact on national governance, including dominance in radio broadcasting, the most important medium in the country. The departure of the Mission means that the media, Government, foreign donors and civil society will need to strengthen the environment for an independent press to make it sustainable, in law and in fact.

In order to build a sustainable, enabling environment for freedom of expression and media independence, the Government and its partners in civil society, the donor community and the media should work towards several key goals. At the level of law, the Government should bring the legal framework into compliance with international human rights law, including by repealing the provisions concerning criminal defamation and sedition. The Government should also take steps to reform official advertising and develop progressive regulation of broadcasting and community radio, which encourages innovation and access. The Government should also allocate sufficient resources and training to properly implement existing laws, in particular the Freedom of Information Act. Foreign donors should work with civil society and the Government to support these goals.

* The present report was submitted after the deadline in order to reflect the most recent information.

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Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Liberia**

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** Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 34/18, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, undertook an official visit to Liberia from 5 to 9 March 2018 at the invitation of the Government. The aim of the visit was to assess the situation as regards the right to freedom of expression in the country, in particular the issues of press freedom, media independence and diversity, and access to information.

2. The Special Rapporteur is grateful to the Government for inviting him to undertake the visit and for facilitating government meetings. During the visit, the Special Rapporteur met with President George Manneh Weah, the Chief Justice of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives, the Minister for Foreign Affairs and several senior ministry officials, the Minister of State, the Deputy Minister of Internal Affairs, the Minister and Deputy Ministers of Gender, Children and Social Protection, the Minister and Deputy Minister of Information, the legal adviser to the Human Rights Protection Division of the Ministry of Justice, the members of the National Elections Commission, the Chair and Commissioners of the Independent National Commission on Human Rights, the Chair and the Commissioners of the Independent Information Commission, and other officials throughout the Government. The Special Rapporteur wishes to express his gratitude to the Government of Liberia for its continuing cooperation and the constructive dialogue, and to the Independent National Commission on Human Rights for its assistance during the visit.

3. The Special Rapporteur also met with the President of the Press Union of Liberia, the Associate Dean, students and faculty at the Louis Arthur Grimes Law School of the University of Liberia, journalists and media representatives, and others in civil society. The Special Rapporteur would like to thank all the journalists, lawyers, academics, civil society representatives and members of the diplomatic community who met with him, providing detailed information about the situation in the country.

4. The Special Rapporteur also expresses his gratitude to the staff of the United Nations Mission in Liberia (UNMIL) for their assistance during the visit.

5. The Special Rapporteur considers the invitation, support and facilitation of the visit as a sign of the willingness of Liberia to continue a constructive dialogue. His was the first official mission to Liberia by a mandate holder since the 2006 visit of the Independent Expert on technical cooperation and advisory services in Liberia. He therefore presents his findings and recommendations in a spirit of constructive engagement, supporting the efforts of Liberia towards the strengthening of its rule of law through the realization of the various elements of the right to freedom of expression.

II. Background

6. From 1989 to 2003, Liberia suffered two catastrophic civil wars, which claimed the lives of an estimated 250,000 people, most of whom were civilian, in addition to the many who were imprisoned, tortured or forcibly disappeared, and the hundreds of thousands who fled the country.[1] The gross human rights and international humanitarian law violations, including the use of child soldiers, rape, slavery, massive displacement of the population and ethnic-based violence, made the conflict one of the bloodiest in recent history. Around half of the population was forcibly displaced and an estimated two thirds of women were subject to sexual violence during displacement. Gross domestic product per capita dropped by more than 70 per cent during the conflict and the infrastructure and institutions were left decimated.[2]

[1] See www.unhcr.org/news/briefing/2004/9/41595bdc4/liberia-repatriation.html.

[2] See https://www.cgdev.org/files/14912_file_Liberia_Growth.pdf.

7. Due to the conflict, United Nations agencies have long been present in Liberia. In 1993, the Security Council established the United Nations Observer Mission in Liberia (UNOMIL).[3] UNOMIL was created as part of the Cotonou Agreement to support the efforts of the Economic Community of West African States (ECOWAS) in Liberia during the first civil war (1989–1996). UNOMIL was superseded by the United Nations Mission in Liberia (UNMIL) in September 2003.[4] A power-sharing agreement in 2003 largely ended the fighting and created a national transitional government, which, supported by United Nations peacekeeping troops, replaced the Government and ruled until a democratically elected administration was installed in 2006. The mandate of UNMIL was to support the implementation of the ceasefire agreement and the peace process, protect civilians, United Nations staff and facilities, support humanitarian and human rights activities and assist in national security reform, including national police training, and formation of a new, restructured military. The Human Rights and Protection Section of UNMIL was established in 2004, with a mandate to contribute towards international efforts to protect and promote human rights in Liberia, with particular attention being paid to vulnerable groups, including refugees, returning refugees and internally displaced persons, women, children and demobilized child soldiers. UNMIL Radio, which was established at the same time as the Mission itself, came to have a dominant role nationwide until its closure at the end of March 2018.

8. In 2003, the Commission on Human Rights established the mandate of the Independent Expert on technical cooperation and advisory services in Liberia, which ended in 2008.

9. In 2016, UNMIL completed the transfer of responsibility for security to the Liberian authorities, and continued its gradual disengagement from the country until its final completion on 21 March 2018. The United Nations country team, including the newly established Office of the United Nations High Commissioner for Human Rights, will continue to work on reforming the security sector, disarmament, demobilization and reintegration, human rights and transitional justice, law enforcement capacity-building, social cohesion and sustainable development.

10. In 2005, the country held its first post-conflict elections, leading to the election of Ellen Johnson Sirleaf as President. She was re-elected in 2011 and served a full second term. In 2017, the country successfully concluded its third post-war presidential elections, with the election of George Manneh Weah. During the post-war period, the country has sought to re-establish its public institutions and create new structures in the areas of democracy and human rights, including the creation of an independent national human rights institution; reform of the police and law enforcement; and legal reforms.

11. However, the Liberian economy is extremely underdeveloped, posing a major challenge to public institutions and civil society, and of course the livelihoods of individuals. An estimated 64 per cent of the population is living below the poverty line, and the average literacy rate is 48 per cent.[5] Job creation is slow, and there is a shortage of health clinics and access to clean water and education. Despite this, there are steps that Liberia can take to ensure in law the progress made in the area of human rights and freedom of expression, which will contribute to strengthening the rule of law and, in the long run, also the economy of the country.

III. Overview of the situation as regards freedom of expression in Liberia

12. Since the end of the civil war, Liberia has made steady progress towards building and strengthening its democracy. Part of this progress has been the establishment of a

[3] Security Council resolution 866 (1993).

[4] Security Council resolution 1509 (2003).

[5] See https://www.wfp.org/operations/200395-liberia-country-programme-2013%E2%80%932017 and https://www.unicef.org/infobycountry/liberia_statistics.html.

society whose members enjoy the right to exercise freedom of expression and in which the media is vibrant and often critical. During the Special Rapporteur's many meetings, Liberians in Government and civil society celebrated the country's openness to freedom of expression and its people's tolerance of open debate. Many celebrated the free press, though the celebration came with words of concern about its sustainability in the face of the country's economic woes and in the absence of the necessary legal reforms. This open space for expression places Liberia at an extraordinary level given where it started just 15 years ago.

13. As much as Liberians should celebrate the progress that has been achieved, now is the moment to lock in the gains that have been made. Indeed, this is the message that the Special Rapporteur saw reflected in President Weah's inauguration speech in January. In that speech, President Weah expressed a strong commitment to freedom of expression. With a nod to the role of the legislative branch, he noted, "Together, we owe our citizens clarity on fundamental issues such as … freedom of speech". He added that the tolerance of free speech by his predecessor made possible the debate and campaign that led to his election. He added, "Now, in my turn, I will go further to encourage and reinforce not only freedom of speech, but also freedom of political assembly."[6]

14. The President's stated commitment to freedom of expression — and the commitment the Special Rapporteur heard throughout his Government — deserves the support and encouragement of all sectors of Liberian society and the international community. It must also be repeated publicly and consistently by all senior officials in Government. Their commitment to guarantee in law what Liberians have been enjoying in recent years is critical and must be pursued as a matter of the highest priority, demonstrating the country's commitment to the rule of law. Ongoing uncertainty in law, combined with the continued existence of civil penalties to challenge reporting, undermine the gains of recent years. Critical progress can be achieved through the adoption of laws to bring the legal framework into compliance with international human rights law. If Liberia were to enshrine protection of the freedom of expression in the Constitution, and commit to observing international human rights law and specific statutory assurances, it could move to the next level of promoting a strong and independent media throughout the country.

IV. Legal framework

A. International legal obligations

15. Liberia has ratified the main international and regional human rights instruments, many of which contain norms and standards pertaining to the right to freedom of expression, including the International Covenant on Civil and Political Rights (ratified in 2004); the International Covenant on Economic, Social and Cultural Rights (ratified in 2004); the Convention on the Elimination of All Forms of Discrimination against Women (acceded to in 1984); the Convention on the Rights of the Child (ratified in 1993); the Convention on the Rights of Persons with Disabilities (ratified in 2012); and the International Convention on the Elimination of All Forms of Racial Discrimination (acceded to in 1976).

16. At the regional level, Liberia is party to the African Charter on Human and Peoples' Rights (ratified in 1982), the African Charter on the Rights and Welfare of the Child (ratified in 2008), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (ratified in 2008). Liberia is also bound by the jurisprudence of the African Court on Human and Peoples' Rights, as well as the jurisprudence of the ECOWAS Community Court of Justice.

17. Article 19 (1) of the International Covenant on Civil and Political Rights guarantees everyone's right to hold opinions without interference. Article 19 (2) protects everyone's

[6] See https://peacekeeping.un.org/en/excerpts-new-presidents-inaugural-address-22-january-2018-his-excellency-mr-george-manneh-weah.

right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media. In accordance with article 19 (3), any restriction imposed on this right must be provided by law and be necessary and proportionate to protect the rights or reputations of others, national security or public order, or public health and morals. Article 20 calls for the prohibition of advocacy of national, religious or racial hatred that constitutes incitement to violence, hostility or discrimination.

18. The Human Rights Committee, in its general comment No. 34 (2011) on the freedoms of opinion and expression, holds that criminal sanctions, in particular imprisonment for libel and defamation, are disproportionate restrictions on the right to freedom of expression, and recommends that States decriminalize such defamation.

B. Domestic legal framework

19. The Constitution of Liberia protects freedom of opinion and expression, including press freedom and access to information; according to its article 15:

(a) Every person has the right to freedom of expression, being fully responsible for the abuse thereof. This right should not be curtailed, restricted or enjoined by Government save during an emergency declared in accordance with the Constitution;

(b) The right encompasses the right to hold opinions without interference and the right to knowledge. It includes freedom of speech and of the press, academic freedom to receive and impart knowledge and information and the right of libraries to make such knowledge available. It includes non-interference with the use of communication by mail, telephone and telegraph. It likewise includes the right to remain silent;

(c) In pursuance of this right, there is no limitation on the public right to be informed about the Government and its functionaries;

(d) Access to State-owned media is not denied because of any disagreement with or dislike of the ideas expressed. Denial of such access may be challenged in a court of competent jurisdiction;

(e) This freedom is limited only by judicial action in proceedings grounded in defamation or invasion of the rights of privacy and publicity or in the commercial aspect of expression in deception, false advertising or copyright infringement.

20. The wording of the constitutional provision on freedom of expression may allow for restrictions inconsistent with the obligations of Liberia under international human rights law, but it generally provides a strong measure of protection. The Special Rapporteur urges that the Constitution is interpreted in accordance with international human rights standards.

21. Two decrees adopted during the military rule in the 1980s, decree No. 20 of the People's Redemption Council, creating the Liberian Broadcasting System, and decree No. 46 of the Council, creating the Ministry of Information, establish a tight system of government control over media, inconsistent with the constitutional protection of freedom of opinion and expression. Decree No. 20 established the structure of a State-owned and controlled media system, placing the Liberian Broadcasting System as a branch within the Government and under its control. Decree No. 46 established the Ministry of Information, tasked with conducting public outreach, defining communication policies and being the authority that supervises and controls media outlets. The decree also established the Liberia News Agency, which was put under the direct supervision and control of the Minister of Information and the National Communications Bureau, which serves as the official interpreter and regulator of the communications policies of the Government and which represents a political body with broad authority to control media activities. Moreover, the decree established the Motion Picture and Television Review Board, with the responsibility to censor all films for cinema and television imported into Liberia or produced in the country prior to screening for public information and amusement.

22. The Special Rapporteur considers that, even though the decrees in practice may be applied only partially, they create a formal legal framework that is outdated and inconsistent with human rights standards. They provide excessive executive control of the

media and establish governmental agencies that may distort the pluralism necessary for people to have access to diverse sources of information. The long-term constitutional protection of freedom of expression requires the above-mentioned decrees to be repealed. The Special Rapporteur believes that the decrees are remnants of the past that stand in the way of the development of an independent and sustainable media sector. He hopes that there will be the necessary political support to repeal these decrees. Any legislation to replace them should be in line with international human rights norms and standards.

23. The Independent National Commission on Human Rights of Liberia was established in 2005 by law following the Comprehensive Peace Agreement signed in Accra in 2003. However, it was not functional until 2010 when the first Board of Commissioners was appointed by President Johnson Sirleaf. The Commission is empowered by articles 3 and 4 of the act establishing it to (a) promote and protect human rights throughout Liberia; (b) investigate complaints of human rights violations and conduct hearings; (c) propose amendments or reforms to laws, policies and administrative practices and regulations; and (d) advise the Government on the implementation of national and international human rights standards. The Commission is composed of a Board of Commissioners and a secretariat. There are seven Commissioners, appointed for a tenure of five years by the President of Liberia with the consent of the Senate. The Chair serves a six-year tenure. The President's appointment is based on the recommendations of an independent panel of experts convened by the Chief Justice. The Commission can receive complaints and take action on its own initiative. As with other institutions, the main challenges facing the Commission are resources and funding.

V. Modification of speech laws consistent with international standards

24. In order to consolidate the gains made for freedom of expression over the past decade, a series of specific steps would enable Liberia to align its law with international standards. The Special Rapporteur is pleased to note that many of these steps are already part of the conversation on freedom of expression and that government officials expressed strong support for several of them. The first two involve guaranteeing in law the protections to which the Government has committed to in practice.

25. First, the Criminal Code contains provisions that are not in line with the country's obligations under international human rights standards. Articles 11.11, 11.12 and 11.14 of the Criminal Code criminalize defamation of the President, sedition, and defamation of public authorities. Article 11.11 makes it a crime to publicly disseminate an accusation against the incumbent President regarding criminal conduct if the person making the accusation knows that the accusation is untrue and intends to damage the President's reputation. Article 11.12 contemplates the offence of sedition through overbroad wording that can be subject to arbitrary interpretation. The article defines sedition as advocacy for sectionalism, "countyism", tribalism, parochialism or rebellion, incitement to or promotion of insurrection, or accusation of the incumbent President of conduct that constitutes a violation of his or her oath of office. Article 11.14 makes it a crime to accuse any executive authority, judicial authority, member of the Legislature or any other public authority of the commission of a crime, in line with the provision regarding criminal defamation of the President.

26. Criminal defamation involves penalizing statements made by members of the media as well as by others. It has no place in democratic society, susceptible as it is to abuse against reporting, criticism and opposition. It is a disproportionate approach to the problem of defamation, which may be subject to civil actions when appropriately constrained.

27. Sedition also criminalizes expression, namely expression of a political nature. Both criminal defamation and sedition should be removed from the Criminal Code. Landmark cases before the ECOWAS Community Court of Justice in February 2018 and the African Court of Human and People's Rights in 2014 have found that criminal defamation is inconsistent with international and African human rights obligations.

28. The previous Government signalled its intention to embark on a process of repeal by signing the Declaration of Table Mountain in 2012, which called on African Governments to abolish criminal defamation laws. In 2014, President Sirleaf's administration tabled a bill to repeal articles 11.11, 11.12 and 11.14 of the Criminal Code. The bill remains pending in the House of Representatives. Nearly every official in the administration and Legislature with whom the Special Rapporteur met understood that it was time to remove the anachronisms of criminal provisions governing the press. President Weah has expressed, both publicly and privately, his commitment to repeal those provisions of law. The Special Rapporteur urges the Government to finalize the already initiated process to repeal those provisions, in order to bring the legal framework into compliance with international human rights standards.

29. Second, the Special Rapporteur learned from a number of sources about the implications of the libel law on journalists. In particular, it allows for large financial awards in civil suits, which may cause self-censorship and severe economic difficulties for journalists and media outlets. In recent years, there have been several cases in which public authorities have filed civil libel lawsuits against local newspapers and journalists, seeking large awards for damages. In 2013, the editor-in-chief of the investigative newspaper *FrontPage Africa* was imprisoned for libel because he could not pay $1.5 million in damages following a judgment. Only one month after the Special Rapporteur's visit, *FrontPage Africa* faced another civil suit because of its reporting, leading to the arrest of its staff and a $1.8 million fine. The lawsuit related to an advertisement about land administration published in March 2018. A week before papers were served, the Mayor of Monrovia publicly condemned the newspaper's critical reporting about the Government. Following the lawsuit, Rodney Sieh, the editor-in-chief, came under attack on social media from government supporters, including posts displaying a photograph of his house. On another post on Facebook on 10 April 2018, the acting head of the National Port Authority suggested that she should have been the one to order the closure of *FrontPage Africa* and arrest its staff.

30. The current legal framework provides no limitation on the amount of damages that a defendant may have to pay. To avoid excessive fines and de facto criminalization of libel, the Special Rapporteur strongly recommends that the existing legal framework be amended to provide for a strict cap on the amount of damages that can be sought in civil libel lawsuits, in line with the principle of proportionality and the need to ensure that measures that endanger the financial viability of a journalist or media outlet do not lead to self-censorship. This would also be in line with the provision in article 21 of the Constitution, which prohibits excessive penalties.

31. The Special Rapporteur is sensitive to the concerns raised about perpetuating fraud or blackmailing practices that take place under the cover of journalism. However, fraud and blackmail are criminal offences, which can and should be dealt with separately from criminal defamation. It is of fundamental importance to ensure that the legal framework does not deter investigative journalism.

VI. Promoting free and independent media

32. According to the Special Rapporteur's interlocutors, in both Government and civil society, the sustainability of the media as a powerful democratic force may be at risk unless several steps are taken, both in the short and long term, to ensure a diverse and professional corps of radio, print and television journalists throughout the country. The legal reforms noted above will go a long way towards promoting press professionalism and independence, not to mention the ability to cover key issues, such as corruption and other matters, that require long-term dedicated coverage. However, journalists, public authorities and donors in the international community have a role to play as well. The Special Rapporteur encourages the donor community to continue to provide funding and support for initiatives aimed at supporting the development of journalism, especially investigative journalism, in particular through long-term training and the provision of equipment.

33. The media environment in Liberia has expanded rapidly. There are a large number of radio stations and newspapers. Just in Monrovia, there are approximately 40 daily newspapers and more than 15 radio stations, at least 2 of which broadcast nationwide. Moreover, community radio has expanded across the country, comprising around 65 radio stations. While radio stations outnumber print media, the Special Rapporteur understands that the substantial majority of original reporting comes from print media.

34. An extraordinary number of Liberians live in extreme poverty or well below the poverty line. Many, if not most, Liberian journalists struggle to earn a living, putting severe economic pressures on them. The newspapers in particular suffer from an extremely competitive situation in which advertising is almost exclusively governmental (including, at least until recently, that of UNMIL). Interlocutors both within the media sector and outside highlighted to the Special Rapporteur that, while the number of media outlets is important, more attention should be paid to content. What is needed now is a commitment to and a strategy on an enabling environment for independent media. The Special Rapporteur heard repeatedly about the importance of increasing independent content. There is, in particular, a lack of media outlets with sufficient resources to engage in investigative journalism, which requires financing, training and a legal framework to promote it. There appears, furthermore, to be an imbalance in the type of issues that receive coverage. It was brought to the attention of the Special Rapporteur that, due to weak political institutions and political parties, media often takes on issues that are in the realm of politics. Therefore, media is often seen as political opposition, and reporting on political issues receives more coverage than other issues in society.

35. However, government officials and members of civil society expressed concerns about media professionalism and training. Some raised allegations of a lack of ethical practices and even blackmail as journalistic ills. The Special Rapporteur could not confirm such practices, which in any event would appear to be limited to a small number of cases compared with the vast amount of journalism in the country. But the existence of such concerns among stakeholders highlights both the potential support for dangerous rollback of press freedoms and the need for strong journalism training to strengthen the profession.

36. At a press conference on 22 March 2018, President Weah openly described local journalist and British Broadcasting Corporation stringer Jonathan Paye-Layleh as a person who had been opposed to the President over the years. Mr. Paye-Layleh is now reported to be living in fear for his life. The Special Rapporteur is concerned at what such statements from the highest political level signal, since they can be viewed as a threat to the independent role of journalism.

37. *Tools, training and support*: interlocutors pointed to the need for substantive training of journalists, in particular training that can empower journalists. At the same time, the Special Rapporteur cautions against an overemphasis on training. Given the current economic and media situations, the Special Rapporteur believes that part of the solution lies in giving journalists the tools they need to perform their professional duties. In addition, alternative forms of support, such as reporting grants and mentorships with professional domestic, regional and international media should be encouraged, including through the engagement of the donor community. This would include equipment, such as laptops, cameras, recorders and fuel to travel in connection with reporting. Additionally, programmes that encourage proactive reporting and community media could also contribute to expanding the types of issues that receive coverage, and thereby help to expand the diversity of media, not just as regards their number but also content. In this regard, the Special Rapporteur encourages media actors and institutions to better identify for donors what they need in terms of external funding, rather than this coming from donors.

38. *Independent self-regulation*: the Press Union, which performs a number of important functions for the profession, can also perform an independent self-regulatory function based on its code of conduct and a National Media Council that deals with complaints about violations of professional standards and that can decide on punitive measures in cases in which there are ethical violations, including retraction of a story, apology or expulsion. This is especially important to keep in mind as the Legislature moves to repeal speech laws that are inconsistent with human rights law. Thus, in an environment of legal change, it is critical that the Press Union have the support of journalists and that it take a strong, active

role in driving the professionalism (and highlighting ethical lapses) of journalism in the country. The Press Union can add value, particularly in a period of massive change in the media, and serve as an alternative to the legal system in dealing with allegations of unprofessional conduct. The Special Rapporteur also encourages the Press Union to strengthen its capacity in its chapters across the country, which also involve community radio.

39. *Independent public broadcasting*: the proposed Liberia Public Broadcasting Service Act, first introduced to the Legislature as a bill in 2008, would transform the State-owned Liberian Broadcasting System into an independent public service broadcaster. Enactment of this bill would also require the repeal of decree No. 20, adopted in 1980 during the military rule, which established the structure and organization of the Liberian Broadcasting System. The Special Rapporteur welcomes the proposed act and encourages further discussions about several aspects of it. For example, the bill stipulates a specific sum of money to be allocated by the Legislature annually. To avoid the possible negative effects of inflation, the Special Rapporteur would advise that a percentage of the annual general budget be set rather than a specific amount. Furthermore, the bill establishes a board of directors as the main governing body, with an appointment procedure that, in its current form, is vague and requires further elaboration. Moreover, the bill proposes that the President designate the chair of the board. However, the Special Rapporteur advises that, in order to preserve the autonomy of the institution, the chair should be elected by the board itself. The bill would also benefit from including provisions on the transitional phase given the complexity of the transition that is needed in order to transform the current State broadcasting structures into the Public Broadcasting Service model.

40. At the present time, the Liberian Broadcasting System is a central media actor and, by all accounts, produces some strong journalism. However, it is also widely seen as a government outlet, aimed at promoting government views. For example, the Liberian Broadcasting System reportedly supported one candidate during the presidential elections. The Special Rapporteur understands that the public authorities seem to have a general misconception about the role of State media. The autonomy of the Liberian Broadcasting System, in particular during the recent elections, has been under strong political pressure as all political actors see it as an instrument of the ruling political party. There appears to be a growing consensus to transform it into a public service broadcaster with public-interest journalism as its primary mission. Its transformation into an independent public broadcasting service could make significant improvements in terms of establishing a standard for quality journalism, access to information and strengthening democratic practices.

41. *Regulation of broadcasting*: as part of the creation of an independent public broadcaster, Liberia should also adopt broadcast regulations. There is currently no proper regulatory system in place for broadcast or audiovisual media that is in line with international standards. The Liberia Telecommunications Authority is the agency that assigns and manages broadcasting frequencies and operates on the basis of the general law on telecommunications. The existing regulations mainly cover technical aspects of broadcasting linked to the use of the spectrum. Other areas of broadcasting regulations, including media concentration, advertising and protection of minors, are not subject to legal regulation. At present, a bill to establish an independent broadcast regulator is pending before the Legislature (Act to Establish an Independent Broadcast Regulator for Liberia). The Special Rapporteur encourages more dialogue, especially with civil society actors.

42. The bill would constitute a broad regulation of the audiovisual sector, including the establishment of an independent regulator. Concerns have been raised that the bill has several deficiencies that need to be addressed, including overbroad or vague wording, lack of inclusion of digital media from regulation, and a lack of reference to the principle of proportionality in its regulation of sanctions for violating the terms of the licences. The bill also includes a section on advertising, including maximum hourly and daily advertising, and the need to clearly differentiate between advertising and editorial content. The Special Rapporteur encourages further discussion and elaboration of these aspects of the bill with a view to establishing a sustainable framework for the regulation of broadcasting in Liberia.

43. *Community broadcasting*: in 2012 a bill on community broadcasting (Act to establish the Rural Community Radio Stations Sustainability) was submitted to the Legislature. It has been pending before the Senate for review since 2014. It has been perceived by stakeholders to be an important tool for the reform of the community broadcasting system by establishing a proper legal framework for community broadcasting in order to secure its presence as a main pillar of the Liberian communications system. In fact, community radio is an essential part of the Liberian media environment and it is timely to begin strengthening it in law. It is a sector that consists of a variety of outlets and the Special Rapporteur heard from interlocutors that some community stations were owned by political actors who were intent on disseminating their own political viewpoints. In other cases, community stations act to further commercial interests. However, the bill as it currently stands establishes requirements regarding content, including the need not to include content that is offensive or distasteful to the public's sensibilities or that contains explicit or implicit attacks on religious, social and cultural values that promote communal disharmony and discontent or is vulgar and suggestive of falsehood. Such provisions give excessively broad powers to unduly and arbitrarily restrict expression, and the bill provides the regulator with seemingly excessively vague discretion to recommend the imposition of penalties on broadcasters. The Special Rapporteur urges that this legal reform be conducted through extensive and participatory consultation with all stakeholders.

44. *Government advertising*: broadcast and print media rely upon government advertising, with very few companies outside of the telecommunications sector devoting advertising resources to support the media. The Special Rapporteur understands from a number of outlets and journalists that government departments often fail to pay for the advertising that they ask the outlets to place, with some bills amounting to tens of thousands of dollars. As a matter of urgency, given the economic woes of the industry, the Government should pay its advertising bills.

45. But there is also a broader concern expressed by a number of interlocutors. The current unregulated form of government advertising, in the view of many, undermines the quality of reporting. In short, many believe that government departments tend to place advertisements in trusted outlets that support their point of view. Such actions, if true, would have a strongly distorting effect on the media's willingness to critically cover government activities. But even if such distortions are difficult to prove, the possibility of such a distortion will, in the long term, have a negative effect on the trust that people can have in journalism.

46. At present, there appears to be a severely limited regulatory framework for government advertising. The existing regulation is, as the Special Rapporteur understands it, apparently based on Liberian procurement rules. In the absence of a clear legal framework, the risk of government misuse of advertising dollars — and just as importantly, the fostering of distrust among readers, outlets and officials — will increase. The Special Rapporteur urges the Government to consider adopting a set of rules that would regulate official advertising and eliminate the possibility of placing advertising on the basis of the point of view expressed by an outlet or its reporters.

47. *The situation for women journalists*: the Special Rapporteur is pleased to note that women journalists have come to occupy a central role in the profession today, representing the country's top journalists. At the same time, as with journalism worldwide, women face particular risks reporting in Liberia. In addition, cultural and societal factors may prevent some women from speaking out. Radio stations for grass-roots women has allowed the media to reflect on issues that are otherwise not reflected in it and train women on how to bring their issues to its attention and that of the authorities. As a result, radio and information has become and can continue to be a vehicle for development.

48. According to interlocutors, those risks may be found in the newsroom or out in the field. Journalism continues to be a male-dominated sector, despite the increase in women journalists in recent years. The Special Rapporteur is pleased to note that associations of women journalists are growing. There is, however, a lack of women in leadership positions. There is a sense among many that women journalists often need to work twice as hard as their male colleagues to get sources and stories, and that they may face discriminatory attitudes from editors in the assignment of stories and equipment and from the authorities in

their requests for information. Physical security during assignments may also be inadequate, and bad infrastructure and roads make reporting, especially in rural parts of the country, a serious safety issue.

49. *Digital access and social media*: over the course of the visit, the Special Rapporteur came to understand that, despite figures showing low Internet penetration rates, people across the country are increasingly using digital tools to access the news and connect with others both domestically and internationally. An estimated 75 per cent of Internet users access the Internet through their mobile telephones. The Internet has, for instance, become an important tool connecting people in the country and the Liberian diaspora. Moreover, as mobile technology has become cheaper due to the competitive market, individuals in the cities and rural areas are gaining access to the Internet through their smartphones, as is happening across Africa. The result is that news sources throughout the country are increasingly using online platforms, especially Facebook, to share reporting. There is growing concern that Facebook's role could have a deleterious impact on independent media outlets, which are already struggling with economic viability.

50. Public authorities should nonetheless be mindful of the challenges involved in the spread of social technology, especially in a developing economy. In particular, the Special Rapporteur would urge the authorities, as well as the international community and private businesses, to ensure that access to the entire Internet — and not just specialized programmes or individual platforms — expands not only to those who can easily afford it but also to those in situations of extreme poverty. Such communities have just as much a right to access information as anyone else, and to the extent that such access is denied, they will find it harder to gain access to sources of information, ideas, education and so forth. At the same time, social platforms have done a certain amount of damage to the sustainability of media in other environments; since Liberian media outlets already struggle to identify sustainable business models, the further degradation of advertising revenue could be extremely disruptive to their ability to persist in an active media market.

VII. Freedom of information

51. Liberia adopted the Freedom of Information Act in 2010. The Act is a strong model of freedom of information globally, a critical tool to enable anyone, citizen or non-citizen, to access information held by public authorities, autonomous agencies and private bodies performing public functions (section 1.6 of the Act). As important as it is, it also requires continued implementation and enforcement. The Act requires all government agencies to have information officers who can respond to freedom of information requests. However, not all agencies have information officers and there is a need for continued attention to be paid to implementing the law and training information officers in the Executive branch, as well as in the Legislature and the judiciary. While the Act includes provisions on proactive dissemination of information by government agencies, this aspect is yet to be fully achieved. Furthermore, interlocutors have raised concerns about the abuse of the exemptions in the Act. Even though things are opening up, there still appears to be an entrenched level of secrecy. The Special Rapporteur urges the Government, together with civil society, as part of the freedom of information regime, to review its current system of records management with a view to bringing it into line with the transparency requirements established under the Act.

52. The Freedom of Information Act established the Independent Information Commission, which is mandated to enforce the Act and to handle appeals arising under it. In 2015, the Commission established a comprehensive set of Guidelines and Procedures for the Handling and Determination of Freedom of Information Appeals. In addition, it is tasked with raising the awareness of the authorities and the public about the Act, both inside and outside of Monrovia. During a meeting with the Information Commissioner and staff of the Commission, the Special Rapporteur was impressed by their commitment to disseminate information about how the Act works and how individuals may use it. The Commission is faced with limited resources to perform its task. For example, its regional coordinators who are responsible for outreach have not been deployed due to a lack of resources, meaning that the Commission is currently based only in Monrovia. It lacks

sufficient resources to monitor compliance with the Act by the Government, especially outside Monrovia. The Special Rapporteur encourages the Commission to continue in its efforts, think creatively about how to broaden access to the Act, deepen its use, especially by journalists, and increase the visibility of the Commission outside the capital. The support for the Commission is the bare minimum, which neutralizes its potential effect. Some interlocutors were concerned that the lack of sufficient funding for the Commission was motivated by a wish to deliberately keep the institution weak so that it would not have the capacity to monitor.

53. Moreover, the Special Rapporteur encourages a revision of the appeals procedure under the Act. While the Act gives the right to appeal requests that are denied, the process is often stalled and does not end in a decision. Since the enactment of the law, there have been three appeal cases that have been sent to the circuit court, but none have yet resulted in a decision. Moreover, the Special Rapporteur learned during the visit that the current appeals process has a shortcoming since it is not hierarchical. The Information Commissioner has the rank of a circuit judge. However, appeals go to a circuit court, which is a court at the same level. The Special Rapporteur encourages a review of the appeals procedure with a view to ensure that the right to access information is meaningfully implemented.

54. The Special Rapporteur was alerted to what is interpreted as a lack of political will to support implementation of the Act. There is still a way to go for freedom of information, including transparency and openness, to be understood as a prerequisite for stability, the fight against corruption and the rule of law. Most ministries and agencies do not have dedicated structures to deal with freedom of information requests. Government agencies have not appointed public information officers, so freedom of information requests are not processed, and there is no strategy for proactive dissemination of information. The Special Rapporteur understood during the visit that the judiciary only recently appointed a public information officer, while the Legislature — both the Senate and the House of Representatives — lacks such a post. The same applies for the office of the President and the Vice-President.

55. The lack of decentralization also poses difficulties for the proper implementation of the Act. Local officials in the counties often wait for the agreement of Monrovia before disclosing information, leading to prolonged processing times for requests under the Act. As a result, the Act often becomes irrelevant for people in the counties; some interlocutors raised concerns that local officials saw freedom of information requests as entirely politically motivated.

56. Section X of the National Code of Conduct for All Public Officials and Employees of the Government of the Republic of Liberia, which requires all public officials to declare assets, is also significant as regards freedom of information. Civil society has encouraged the Government to implement this law on asset disclosure, which is not being properly implemented. The Special Rapporteur urges all government officials to declare their assets, starting with the President and the Vice-President.

57. The code of conduct under the freedom of information regime has created the Office of the Ombudsman, which has not yet been established. The Special Rapporteur encourages the Government to commit to setting up this office.

58. The Special Rapporteur also encourages better dissemination of information by government agencies, as well as by the Legislature and the judiciary, as well as autonomous agencies and private bodies performing public functions, thus fulfilling their obligation under the law and reducing the number of requests. It is critical that government agencies provide reliable information concerning a range of matters in the public interest, especially public health, the environment, procurement and government contracts, among other critical issues. Similarly, the Special Rapporteur encourages the Government to engage with the media through regular press conferences, in addition to the current practice of issuing press releases.

59. *Protection of whistle-blowers*: following executive order No. 22 of 2009 on the protection of whistle-blowers, known as the Whistle-blower Act, an important step was taken to transform the executive order into law through the Whistle-blower and Witness

Protection Bill, which was submitted to the Legislature for consideration in August 2017. The Special Rapporteur urges the Legislature to enact the law, as it would constitute a fundamental step in creating an enabling environment for freedom of information, investigative journalism and the fight against corruption.

60. *Freedom of information on environmental issues*: during the civil war, control over natural resources fuelled the conflict. Today, the issue of concessions in the areas of energy, agriculture, forestry and mining has become a matter of concern, in particular regarding the process on the basis of which such concessions are given. Interlocutors raised concerns that the decision-making process for concessions lacked consultations with the affected communities, leading to tension between the communities and the concession holders, and giving rise, at times, to serious riots. The Special Rapporteur urges the Government to encourage community and civil society engagement, in particular providing indigenous communities in the areas in which concessions are given with the space needed to make their concerns heard. Concession agreements need to be communicated to the communities concerned by the concession holders. There is, moreover, a lack of information in rural communities about the activities of businesses in their areas, as well as a lack of media focus on development issues.

61. *Right to truth*: the transition to democracy has not been a radical break with the past, leaving remnants of former times that have no place in the Liberia of today. In addition to part of the legal framework, with clear authoritarian features, that continues to be in force, several cases were brought to the attention of the Special Rapporteur about persons associated with war crimes having official positions today. This may prevent disclosure of information relating to serious human rights violations, countering standards on victims' right to truth and freedom of information. The fight against impunity for gross human rights violations is fundamental in the promotion of security and democracy.

62. The Truth and Reconciliation Commission concluded its four-year mandate in 2010. It identified several victims and perpetrators of the abuses committed during the civil war and recommended relevant actions to be taken by national authorities in order to ensure accountability and reparation. However, during the visit, the Special Rapporteur learned from several interlocutors that the implementation of recommendations had proceeded at a slow pace.

63. With the end of the mandate of the Truth and Reconciliation Commission, the Independent National Commission on Human Rights inherited the work of following up on the recommendations made. The recommendations on impunity by the Truth and Reconciliation Commission are yet to be implemented. The Special Rapporteur recognizes that legislation is needed to guide the process of reparation, to ensure both the right to truth and the right to fight impunity.

VIII. Recommendations

64. **After three democratic elections marked by increasingly active media and free expression on the campaign trail, Liberia is enjoying a moment to savour its early post-conflict successes. It is a fraught moment, however, given the deep economic problems the country faces and the deep and legitimate demands of Liberian people for an improvement in the economy and basic institutions of governance. In such a moment, strengthening the system of the rule of law — in particular, guaranteeing in law the practices of recent years and the commitments of the new administration — would signal globally that Liberia is indeed, in President Weah's words, "open for business". It is important for Liberia to address the remaining challenges to consolidate its own democracy. However, recent instances of intimidation of the media, denigrating its role in ad hominem attacks from senior officials, risk undermining the commitments to press freedom made by the President and others. The Special Rapporteur strongly urges all public officials to encourage and promote the role of the independent media in all aspects of governance and not to engage in attacks, even verbal ones, on media professionals. The recommendations below are rooted in this need for sustainable human rights law in Liberia.**

65. **The recommendations are made bearing in mind where Liberia has come from and the current economic situation it is facing, but also where it is capable of going. The Special Rapporteur is confident that the country has the capacity and political will to see this transition through. In this regard, the Special Rapporteur stands ready to provide any technical assistance to the Government when deemed necessary.**

66. **The Special Rapporteur calls upon the relevant authorities to:**

(a) **Reform legislation and implement the existing legal framework;**

(b) **Enact the bill to decriminalize defamation;**

(c) **Develop legislation, in consultation with international standards, to establish strict limits on the damages available in civil defamation suits;**

(d) **Finalize and enact the bill to transform the Liberian Broadcasting System into an independent public broadcasting network;**

(e) **Enact the bill on community broadcasting;**

(f) **Revise and move towards adoption of the bill to establish an independent broadcast regulator;**

(g) **Finalize and adopt the Whistle-blower and Witness Protection Bill;**

(h) **Establish a regulatory framework for government advertising, ensuring accountability and transparency;**

(i) **Identify and train public information officers in all government agencies, in order to comply with the Freedom of Information Act;**

(j) **Establish systems for records management;**

(k) **Engage in proactive disclosure, including regular government press conferences from the Presidency, down to all departments and branches of the State;**

(l) **Allocate the resources necessary for the Independent Information Commission to carry out its mandate, including outside of Monrovia;**

(m) **Establish transparent procedures for concession agreements, including consultations with the affected communities.**

67. **The Special Rapporteur calls on media actors to:**

(a) **Reinforce and strengthen the self-regulatory system of the Press Union, including by addressing matters of widespread public concern;**

(b) **Encourage public discussion of the legal framework and legal reform in order to raise awareness and set an agenda for advocacy;**

(c) **Identify for donors what they need in terms of specific support.**

68. **The Special Rapporteur calls on civil society actors to:**

(a) **Continue their advocacy and monitoring work in relation to the enjoyment of the right to freedom of expression;**

(b) **Use every opportunity to participate in decision-making processes, including in relation to the elaboration of the above-mentioned bills;**

(c) **Follow up and monitor the implementation of the recommendations contained in this report.**

69. **The Special Rapporteur calls on all stakeholders, but especially private companies and international donors, to:**

(a) **Advertise in broadcast and print media outlets in order to broaden the revenue base of competitive media;**

(b) **Encourage and support the expansion of Internet access throughout Liberia while monitoring the impact of social media, in particular to ensure that it does not damage the fragile but essential Liberian media industry;**

(c) Support the capacity-building of and cooperation with the relevant authorities and civil society organizations.